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January 28, 2005

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

**SUBJECT: POLICY TO COLLECT REIMBURSEMENT FOR COSTS OF HEALTH CARE FROM
THE SPONSORS OF LEGAL IMMIGRANTS**

Earlier this year, your Board directed the Department of Health Services (DHS) to evaluate the feasibility of seeking reimbursement from the sponsors of legal immigrants who have obtained health care from DHS facilities. This report was provided to you in January 2004, via a County Counsel memo, as this matter was the subject of litigation at that time. Below is a summary of the Department's conclusions, based on its consultation with County Counsel, regarding this matter.

Does the County have a legal obligation to seek reimbursement from the sponsors of legal immigrants?

No. As a result of a September 2004 ruling by Judge David Yaffe in the *Anderson/Netkin* case, the County has no legal obligation to inquire whether its patients are sponsored immigrants or to collect the cost of their care from their sponsors. County Counsel has advised that, without a legal obligation to implement such a policy, the decision to do so becomes a policy matter within the Board's discretion.

For a number of practical reasons, as well as the opinion of County Counsel that the decision to implement a reimbursement policy could be challenged in the courts as an abuse of discretion, the DHS has determined that implementing such a policy is not feasible.

Is it cost effective for the County to seek reimbursement from the sponsors of legal immigrants?

DHS believes it would not be cost-effective to seek reimbursement from the sponsors of such patients. DHS currently screens all patients for financial resources, including public and private insurance. Those patients who do not have insurance (e.g., Medi-Cal, commercial insurance, etc.) are screened for their "ability to pay" the costs associated with their care.

Accordingly, in the case of sponsored immigrants, those who have an ability to pay are liable to pay for all or a portion of the costs of their care, the same as any DHS patient found to have an ability to pay. While the federal law is predicated on the notion that the sponsors of such immigrants have the means to ensure

these individuals do not become dependent upon public benefits, in reality this is not always the case. If DHS were to implement a reimbursement policy requiring payment by sponsors of legal immigrants, it would be seeking reimbursement from individuals who will likely have no greater ability to pay than the majority of the DHS patient population. Because of this, DHS believes the cost of seeking reimbursement from this population would exceed the amount of revenue that would be recovered.

DHS believes it would be more cost-effective to devote the efforts of financial screening staff to other revenue generating activities, such as Medi-Cal applications, Healthy Families, etc. Furthermore asking patients specifically to identify their immigration status may result in fear among immigrant patients and lead to patients forgoing needed medical care. Failing to obtain necessary treatment ultimately would lead to poorer health outcomes and higher health care costs in the future, as well as pose public health risks.

Are the County DHS programs means tested?

No. Under the law in this area, County Counsel has advised that the County may collect from sponsors only if the health care that DHS provides is a "means tested" public benefit. The Department does not condition the provision of health care on a person's financial status, as is the case with traditional means tested programs, such as welfare benefits. Neither the Ability-To-Pay nor the Outpatient Reduced-Cost Simplified Application plans are means tested programs.

Is the County likely to be challenged on the legality of seeking reimbursement from the sponsors of legal immigrants?

Yes. County Counsel staff has advised that while the decision to implement a reimbursement policy is within the Board's discretion, such a determination, as well as all elements of the policy itself, are susceptible to a legal challenge under an "abuse of discretion" standard. Given the facts, County Counsel has determined that it is likely that the policy will be challenged on these grounds.

DHS believes that a reimbursement policy is not feasible and does not recommend that such a policy be implemented. This recommendation is based upon practical considerations outlined above, as well as the legal analysis provided by County Counsel.

If you have questions or require additional information, please let me know or your staff may contact Larry Gatton, Chief, Revenue Services, at (213) 240-8366.

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c: Chief Administrative Office
County Counsel
Executive Officer, Board of Supervisors